



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**JUL 21 2010**

REPLY TO THE ATTENTION OF:  
**E-19J**

Mr. George Poirer  
Federal Highway Administration  
525 Junction Road, Suite 8000  
Madison, Wisconsin 53717-2157

**RE: Comments on the Final Environmental Impact Statement (FEIS) for Wisconsin State Highway 23, Fond du Lac to Plymouth, Fond du Lac and Sheboygan Counties, Wisconsin, Wisconsin Project ID 1440-13-00, CEQ #: 2010028**

Dear Mr. Poirer:

The U.S. Environmental Protection Agency has received the document listed above. Under the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations, and Section 309 of the Clean Air Act, EPA reviews and comments on major federal actions.

The FEIS presents a change to the Preferred Build Alternative. An interchange will be built at the County G intersection. The impacts of this change are not stated succinctly in one place in the document. However, after reviewing the Environmental Evaluation Matrix beginning on page 4-25 of the FEIS and comparing it to the same matrix in the SDEIS, we gather that there are 0.4 acres of more wetland impacts (P. 4-92) and 1 less acre of upland habitat impact (p. 4-36) due to the additional intersection. The FEIS also presents another change for corridor preservation. Option 23-1 and Option 23-2 are not moving forward as corridor preservation measures for the US 151/Wisconsin 23 system interchange. Therefore, there will be no corridor preservation for the US 151/Wisconsin 23 interchange.

For the most part, our comments on the Supplemental Draft Environmental Impact Statement (SDEIS) were adequately addressed in the FEIS. We do have some reiterative comments about wetlands and clean diesel initiatives in the following paragraphs.

**Wetlands**

Thank you for updating and clarifying the Clean Water Act (CWA) Section 303 (d) listed stream segments. We understand that water resources with impairments are outside of the project study area and the nature of their impairments (PCBs) is unlikely to be affected by a highway construction project.

The text of the FEIS proposes the single-span bridging without piers of both the Sheboygan and Mullett Rivers (pages 4-119 and 4-127). Your response to our DEIS comment about this subject ("EPA 14" on page 6-16) is contradictory, indicating that a culvert will be used to cross the Mullet River. Please clarify. In addition, if a culvert is used for the crossing of the tributary of the Sheboygan River, as proposed on page 4-123, then the box culvert approach is more suitable than conventional round culverts.

The current estimate of the wetland impacts for the preferred alternative is 32.0 acres for highway lanes, 0.7 acre for connecting roads and 10.7 acres for the Old Plank Trail, totaling about a 43-acre loss of wetlands. The current estimate is lower than the DEIS estimate of 58 acres but is still a substantial, adverse effect to aquatic resources. A large portion of the project work addressing wetlands is being deferred to the project design phase, including the formal wetland delineation for the CWA Section 404 permitting process. Every effort should be made to avoid and minimize wetland impacts during the project design phase. In addition, we strongly suggest that a systematic quality assessment of vegetative quality and other functional values be made of the actual wetland resources proposed for dredging or filling.

The proposed extension of the Old Plank Trail is a worthy part of the project. The trail can expose more individuals to green space and provide for non-motorized transportation and recreation, both of which improve the livability of the surrounding area. However, it presents about one-quarter of the proposed adverse impacts to wetlands of the entire project. The FEIS states that there will be an opportunity for the trail extension to avoid the existing CWA Section 404 permit compensatory mitigation site near the Old Wade House, (p. 4-174 and figures K3 and F6). Trail refinements will need to be the subject of continued attention during the project design phase. The physical avoidance of the old compensatory mitigation site, whose intent was to provide a wetland resource in perpetuity (even if unsecured by a real estate protection tool) is important (see response to EPA DEIS comment 10, p. 6-16). A detailed diagram/map of this situation, showing the highway, trail, mitigation site wetlands and other wetlands, would enhance the Record of Decision.

Substantial work will be occurring during the design phase to determine compensatory mitigation for wetland losses. Compensatory mitigation site locations should be in the same watershed, but away from any future disruption by transportation projects or other land-use changes. The sites will need to be protected by a conservation easement or other suitable protective real estate tool, as required by the EPA-Corps Mitigation Rule dated April 10, 2008. Equally as important will be good design for water quality protection of the Old Wade House compensatory mitigation site and any other compensatory mitigation site along the project route through the effective use of native plant buffers and other design and management practices. EPA will give considerable attention to the proposed compensatory mitigation sites during the CWA Section 404 permit process.

The EPA reserves the right to comment fully on the final project proposal during the CWA Section 404 permit process, jointly administrated by EPA and the Army Corps of Engineers. In addition, we consider corridor preservation a suitable topic in the EIS process; however, EPA reserves the right to comment on the corridor preservation alternative and its alternatives during any *future* CWA Section 404 permit process.

#### Clean Diesel Initiatives

We are encouraged that FHWA and the Wisconsin Department of Transportation are considering making clean diesel initiatives part of a voluntary or mandatory commitment by contractors. For future projects, we hope that these initiatives are firm contract commitments and represented has such in EIS's. Your response to our comments concerning clean diesel initiatives, "EPA 29 and EPA 30" found on pages 6-25 and 6-26, references the incorrect section for the text revisions. The correct Section is Section 5.3-not Section 5.5.

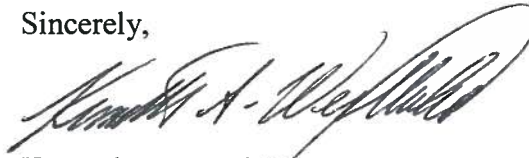
### Background Information

The DEIS presented 6 action alternatives to reconstruct Wisconsin Highway 23 to a four-lane divided highway in order to alleviate the safety and congestion problems due to the increased traffic and numerous access points. After the DEIS was issued, Alternative 1 was chosen by your agency and the state as the Preferred Alternative.

The purpose of the SDEIS was to present the changes made to the Preferred Build Alternative 1 and to add and evaluate the Corridor Preservation Alternatives. The alternatives presented in the SDEIS were the No Build, the Dismissed Build Alternatives (alternatives 2, 3, 4, 5, and 6), and the Preferred Build Alternative 1 (including extending Old Plank Trail and adding interchanges at County K and UU). Corridor Preservation Alternatives were also presented for the Wisconsin 23 Corridor (future interchanges and overpasses) and the US 151/Wisconsin 23 System Interchange (Option 23-1 and Option 23-2).

Thank you for the opportunity to review your project. If you have any questions regarding EPA's comments, please contact Julie Guenther at (312) 886-3172 or email her at [guenther.julia@epa.gov](mailto:guenther.julia@epa.gov).

Sincerely,



Kenneth A. Westlake  
Chief, NEPA Implementation Section  
Office of Enforcement and Compliance Assurance

cc: Mr. Robert Wagner, P. E.  
Division of Transportation System Development  
Northeast Region  
944 Vanderperren Way  
P.O. Box 28080  
Green Bay, WI 54324-0080

Joey Shoemaker  
Department of the Army  
St. Paul District, Corps of Engineers  
Sibley Square at Mears Park  
190 Fifth St. E., Suite 401  
St. Paul, Minnesota 55101-1638

Joanne Kline  
Wisconsin Department of Natural Resources  
Southeast Region Headquarters  
2300 N. Dr. Martin Luther King, Jr. Drive  
Milwaukee, Wisconsin 53212

Louise Clemency  
United States Department of the Interior  
Fish and Wildlife Service  
Green Bay ES Field Office  
2661 Scott Tower Drive  
New Franken, Wisconsin 54229-9565